

BEFORE THE POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

WILLIAM B. DICKSON COMPANY
dba HLD CO.,

Appellant,

v.

PUGET SOUND AIR POLLUTION
CONTROL AGENCY,

Respondent.

PCHB No. 91-129

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

Wm. B. Dickson Company dba HLD Co., appealed Puget Sound Air Pollution Control Agency's (PSAPCA's) Notice and Order of Civil Penalty No. 7421 (amended) one thousand dollars (\$1000), for alleged asbestos violation. The Washington State Pollution Control Hearings Board held a hearing on the merits on September 20, 1991, in Lacey, Washington. Present for the Board were Annette S. McGee, Presiding, and Chairman Harold S. Zimmerman.

At the hearing, John Dickson, Vice President of HLD Co. represented the appellant. Attorney Keith D. McGoffin represented PSAPCA. The proceedings were taken by court reporter Louise M. Becker of Gene Barker and Associates, Olympia, WA. The hearing was also tape recorded.

Witnesses were sworn and exhibits entered. Argument was made. Board Member Judith A. Bendor has reviewed the record. From the testimony and argument heard, and exhibits reviewed, the Board makes the following:

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(1)

1 FINDINGS OF FACT

2 I

3 HLD Construction, Inc. (HLD), 3315 S. Pine Street, Tacoma,
4 Washington, is a Washington corporation established for the sole
5 purpose of removing asbestos. It is a subsidiary of Wm. B. Dickson
6 Company, Inc., General Contractors, which is also a licensed
7 Washington Corporation whose address is 3315 S. Pine, Tacoma. Wm. B.
8 Dickson is President and Treasurer of HLD Construction, Inc., with
9 both John L. Dickson and Richard L. Dickson, Vice Presidents. William
10 B. Dickson is also the President of William B. Dickson Co., Inc.

11 II

12 On February 13, 1991, HLD filed with PSAPCA a Notice of Intent to
13 Remove or Encapsulate Asbestos per regulations. William. B. Dickson
14 was listed as owner and signed the Notice as President of HLD. The
15 notice was for the removal of 1,800 sq. ft. of Cement Asbestos Board
16 (CAB) from the exterior of a single family dwelling at 5832 South
17 Washington, Tacoma, WA. The notice stated the removal project was to
18 begin March 4, 1991, and to be completed by March 10, 1991. The
19 property owner was listed as Gilchrist Buick, Inc. of Tacoma.

20 III

21 At approximately 1:28 p.m, March 5, 1991, Joseph J. Eng, PSAPCA's
22 Senior Asbestos Inspector and Manager of the Agency's Asbestos
23
24
25

1 Compliance Program, along with air pollution Inspector, Larry C.
2 Vaughn, responded to an asbestos complaint from the Tacoma-Pierce
3 County Health Department, by driving to the site at 5832 South
4 Washington Street, Tacoma.

5 When they arrived at the above address, they observed a backhoe
6 operator loading demolition debris on a dump truck. The debris,
7 measuring approximately twenty (20) feet high by fifty (50) feet in
8 diameter, appeared to be from a recent demolition of a wood structure
9 on the property. No water or water hoses were in use at the time of
10 inspection, and there were no certified asbestos workers on site.

11 Eng talked to the backhoe operator, Brian Cross, to identify
12 himself and explained the purpose of the inspection.

13 IV

14 Eng and Vaughn inspected the demolition pile and found several
15 pieces of Cement asbestos board (CAB) on the ground along the east
16 side of the pile and on top of a concrete walkway, along the north
17 side of the pile. The CAB was examined and found to be clean, with no
18 dirt residue, and had freshly broken edges. They estimated the CAB
19 found to be a total of approximately two (2) square feet, that had not
20 been properly sealed in leak-tight containers and collected for
21 disposal by HLD Company. Appellant concedes that this is a large
22 amount of asbestos.

1 The remainder of the CAB had been removed from the site.

2 V

3 Eng took photographs of the CAB and collected a sample for
4 analysis. He pointed out the suspected asbestos-containing material
5 to Mr. Cross and suggested that he take a sample, too. Cross
6 declined to do so, and said he would stop further demolition and
7 truck-loading until the asbestos was cleaned up. Eng told him, that
8 if the sample showed more than 1% asbestos, a Notice of Violation
9 would be issued.

10 VI

11 Cross notified John Dickson. Dickson, with certified asbestos
12 workers, went to the site, and the remaining asbestos was removed that
13 same day.

14 VII

15 PSAPCA received the laboratory asbestos analysis report on April
16 1, 1991. It showed the sample contained 35% asbestos (chrysotile).

17 On May 14, 1991, PSAPCA sent Notice and Order of Civil Penalty
18 No. 7421, one thousand dollars (\$1,000), to William B. Dickson, dba
19 HLD Co., and to Gilchrist Buick. On May 28, 1991, Gilchrist Buick
20 filed with PSAPCA a request for mitigation, notifying them that Tacoma
21 Transportation Services, Inc. was the actual property owner. On May
22 30, 1991, William B. Dickson, dba HLD Co. filed an appeal with the
23 Pollution Control Hearings Board, which became PCHB No. 91-129.

24 On June 17, 1991, PSAPCA sent amended Notices of Violation

25
26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW AND ORDER
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1 Nos. 10-000327 and 10-000328 to William B. Dickson, dba HLD Company
2 and Tacoma Transportation Services Inc., to replace Gilchrist Buick.
3 On June 20, 1991, PSAPCA issued amended Notice and Order of Civil
4 Penalty No. 7421, which reflected the identified ownership of Tacoma
5 Transportation Services, Inc., alleging violations of PSAPCA
6 Regulation III, Article 4, Sections 4.04(a)(4)(B) and (C), and
7 4.05(a)(1)(B).

8 Tacoma Transportation Services, Inc. has not filed an appeal.

9 VIII

10 By way of background, PSAPCA is not required to do inspections
11 prior to demolition. However, the Agency endeavors to do so. On
12 March 5, 1991, Inspector Eng had 20 inspections scheduled, and this
13 removal was not on that day's list. The project's Notice of Intent
14 had a completion date of March 10, 1991. Inspector Eng was responding
15 to a complaint.

16 IX

17 The removal company estimated there was 1800 square feet of
18 exterior CAB siding to be removed prior to demolition. See Notice of
19 Intent to Remove.

20 Appellant's sole witness was John Dickson. He had not been on
21 site during the demolition on March 4 or 5. He did go to the site on
22 March 5, 1991, after the PSAPCA inspection, to have the remaining
23 asbestos removed. His testimony did not demonstrate any personal
24

1 knowledge of the origin of the CAB, or whether there was CAB elsewhere
2 in the house. Such evidence is not probative. See Wells Trust v.
3 Grand Central, 62 Wn.App. 593, 606 (1991). We find it more probable
4 than not that the CAB found in the demolition debris pile was exterior
5 siding.

6 X

7 HLD has worked on over 100 asbestos removal projects. It had an
8 asbestos violation last year in a terminal project in Seattle.

9 XI

10 Any Conclusion of Law deemed to be a Finding of Fact is hereby
11 adopted as such.

12 From these Findings of Fact, the Board makes these:

13 CONCLUSIONS OF LAW

14 I

15 The Pollution Control Hearings Board has jurisdiction over the
16 parties and the subject of this appeal. Chapters 70.94 and 43.21B RCW.

17 II

18 PSAPCA has the authority to carry out a program of air pollution
19 prevention and control, including regulation of asbestos removal in a
20 geographical area, which includes Pierce County.

21 III

22 Regulation III at Sections 4.04(a)(4)(B) and (C) requires that
23 all asbestos-containing materials that have been removed or may have
24

1 fallen off components during the course of an asbestos project shall
2 be collected for disposal at the end of each working day, and
3 contained in a controlled area at all times until transported to a
4 waste disposal site.

5 Section 4.05(a)(1)(B) requires that after wetting, all
6 asbestos-containing waste material is to be sealed in leak tight
7 containers to ensure that the asbestos remains adequately wet when
8 deposited at a waste disposal site.

9 Under RCW 70.94.431, civil penalties up to \$1,000 per day for
10 each violation can be assessed.

11 IV

12 We conclude that the removal of asbestos had concluded by the
13 time the PSAPCA inspection occurred, and therefore, it was the "end of
14 the working day" under the regulation. It is uncontested the material
15 found was asbestos.

16 V

17 Having previously found (Finding of Fact IX), we now conclude,
18 that at the time of the inspection, all of the CAB had not been
19 collected, contained in a controlled area, nor sealed while wet in a
20 leak-tight container. We, therefore, conclude Regulation III,
21 Sections 4.04(a)(4)(B) and (C), and 4.05(a)(1)(B) were violated by HLD
22 Construction, Inc.

V

The purpose of fines is to encourage the parties and the general public to comply with the law. In reviewing the appropriateness of fines, we look at several factors, including the scope of the violation, past conduct, and conduct after the violation occurred and before the Notice of Violation issued.

Appellant conceded that the amount of asbestos at issue was large. The company had a violation last year. On the other hand, when informed about the problem, they immediately took remedial action, and we are convinced that they are sincere in their efforts. We conclude some lessening of the penalty is appropriate.

VI

Any Finding of Fact which is deemed a Conclusion of Law is hereby adopted as such.

From these Conclusions of Law, the Board enters the following:

ORDER

Notice and Order of Civil Penalty No. 7421 (amended) for \$1,000 is AFFIRMED, with two-hundred fifty dollars (\$250) SUSPENDED, provided that there is no air pollution violation for a period of three (3) years from the date of this ORDER.

DONE this 7th day of November, 1991.

POLLUTION CONTROL HEARINGS BOARD

Annette S. McGee
ANNETTE S. MCGEE, Presiding Member

Harold S. Zimmerman
HAROLD S. ZIMMERMAN, Chairman

Judith A. Bendor
JUDITH A. BENDOR, Lawyer Member